

of Rights to Inventions, in all solicitations that include the clause at 1852.227-70, New Technology.

(e) *Designation of New Technology Representative and Patent Representative.* The contracting officer shall insert the clause at 1852.227-72, Designation of New Technology Representative and Patent Representative, in all solicitations and contracts containing either of the clauses prescribed in paragraph (a) or (b) of this section. It may also be inserted, upon consultation with the installation's Patent Counsel, in solicitations and contracts using another patent rights clause in accordance with paragraph (c) of this section.

(f) *Solicitation provision.* The contracting officer shall insert the provision at 1852.227-84, Patent Rights Clauses, in solicitations for experimental, developmental, or research work to be performed in the United States, its possessions, or Puerto Rico when the eventual awardee may be a small business or a nonprofit organization.

[54 FR 28272, July 5, 1989, as amended at 54 FR 39372, Sept. 26, 1989; 55 FR 27089, June 29, 1990; 60 FR 40514, Aug. 9, 1995]

1827.374 Procedures.

1827.374-1 General.

(a) *Contractor appeals of exceptions.* In any contract with other than a small business firm or nonprofit organization, the NASA Patent Waiver Regulations, 14 CFR part 1245, subpart 1, shall apply. In any contract with a small business firm or nonprofit organization, FAR 27.304-1(a) shall apply.

(b) *Greater rights determinations.* In any contract with other than a small business firm or a nonprofit organization and with respect to which advance waiver of rights has not been granted (see 1827.372(b)), the contractor (or an employee-inventor of the contractor after consultation with the contractor) may request waiver of title to an individual identified subject invention pursuant to the NASA Patent Waiver Regulations, 14 CFR part 1245, subpart 1. In any contract with a small business firm or a nonprofit organization, FAR 27.304-1(a) shall apply.

(c) *Retention of rights by inventor.* The NASA Patent Waiver Regulations, 14 CFR part 1245, subpart 1, apply for any

invention made in the performance of work under any contract with other than a small business firm or a nonprofit organization. For inventions made under a contract with a small business firm or a nonprofit organization, FAR 27.304-1(b) shall apply.

(d) *Government assignment to contractor of rights in Government employees' inventions.* FAR 27.304-1(c) shall apply.

(e) *Additional requirements.* See 1827.373(a).

(f) *Revocation or modification of contractor's minimum rights.* Revocation or modification of the contractor's license rights (see 1827.372(i)(2)) shall be in accordance with 37 CFR 404.10, for subject inventions made and reported under any contract with other than a small business firm or a nonprofit organization, and in accordance with FAR 27.304-1(f) for subject inventions made and reported under any contract with a small business firm or a nonprofit organization. The contractor's right to appeal a determination to revoke or modify any such license shall be in accordance with 37 CFR part 404, Licensing of Government Owned Inventions.

(g) *Exercise of march-in rights.* (1) With respect to inventions made in the performance of work under any contract with other than a small business firm or a nonprofit organization, the procedures for the exercise of march-in rights shall be as set forth in the NASA Patent Waiver Regulations, 14 CFR part 1245, subpart 1.

(2) With respect to inventions made under any contract with a small business firm or a nonprofit organization, FAR 27.304-1(g) shall apply.

(h) *Licenses and assignments under contracts with nonprofit organizations.* FAR 27.304-1(h) shall apply. NASA's approving official for any assignment requested under FAR 27.304-1(h) is the Associate General Counsel (Intellectual Property). Contractors' requests should be made to the Patent Representative designated in accordance with 1827.373(e) and forwarded, with recommendation, to the Associate General Counsel (Intellectual Property) for decision.

[54 FR 28272, July 5, 1989, as amended at 54 FR 39373, Sept. 26, 1989; 60 FR 40514, 40515, Aug. 9, 1995]

1827.374-2 Contracts placed by or for other Government agencies.

FAR 27.304-2 shall apply. (See also 1827.373(c)(2).)

[54 FR 39373, Sept. 26, 1989]

1827.374-3 Contracts for construction work or architect-engineer services.

(a) If a contract for construction work or architect-engineer services with other than a small business firm or a nonprofit organization has as a purpose the performance of experimental, developmental, or research work, or test and evaluation studies involving such work, and the contract calls for or can be expected to involve the design of a Government facility or of novel structures, machines, products, materials, processes, or equipment (including construction equipment), the contract shall include the clause prescribed at 1827.373(b) except as provided in FAR 27.304-3(b).

(b) For all other contracts for construction work or architect-engineer services, FAR 27.304-3 shall apply.

[54 FR 28272, July 5, 1989, as amended at 60 FR 40515, Aug. 9, 1995]

1827.374-4 Subcontracts.

(a) The policies and procedures in this subpart apply to all contracts at any tier. Hence, unless the contracting officer otherwise authorizes or directs, contractors awarding subcontracts and subcontractors awarding lower-tier subcontracts shall select and include one of the following clauses, suitably modified to identify the parties, in the indicated subcontracts:

(1) The clause at 1852.227-70, New Technology, in any subcontract with other than a small business firm or a nonprofit organization if a purpose of the subcontract is the performance of experimental, developmental, research, design, or engineering work of any of the types described in 1827.373(b)(1) through (6).

(2) The clause at FAR 52.227-11, Patent Rights—Retention by the Contractor (Short Form), modified in accordance with 1827.373(a), in any subcontract with a small business firm or a nonprofit organization if a purpose of the subcontract is the performance of

experimental, developmental, or research work.

(b) Whenever a prime contractor or a subcontractor considers it inappropriate to include one of the clauses discussed in paragraph (a) of this section, in a particular subcontract, or a subcontractor refuses to accept the clause, the matter shall be resolved by the contracting officer in consultation with the installation's Patent Counsel.

(c) Contractors and subcontractors may not use their ability to award subcontracts as economic leverage to acquire rights for themselves in inventions resulting from such subcontracts.

1827.374-5 Appeals.

FAR 27.304-5 shall apply unless otherwise provided in the NASA Patent Waiver Regulations, 14 CFR part 1245, subpart 1.

1827.375 Administration of the patent rights and new technology clauses.**1827.375-1 New technology and patent rights follow-up.**

(a) It is important that the Government and the contractor know, protect, and exercise their rights in inventions, discoveries, improvements, and innovations made in the performance of work under NASA contracts in order to ensure their expeditious availability to the public; foster commercial use; enable the Government, contractor, and public to avoid unnecessary payment of royalties; and defend themselves against claims and suits for infringement. To attain these ends, contracts having the clause at 1852.227-70, New Technology, the clause at FAR 52.227-11, Patent Rights—Retention by the Contractor (Short Form), or any other patent rights clause (hereinafter all collectively referred to as "the clause" unless otherwise indicated), should be so administered that—

(1) Reportable items and subject inventions are identified, disclosed, and reported as required by the clause, and requests for waiver of title or election of title, when appropriate, are timely made;

(2) The rights of the Government in reportable items and subject inventions are established;

(3) Where patent protection is appropriate, patent applications are timely filed and prosecuted;

(4) The rights of the Government in filed patent applications are documented by formal instruments such as licenses or assignments; and

(5) Expeditious commercial utilization of reportable items and subject inventions is achieved.

(b)(1) For each contract containing the clause, the contracting officer shall designate representatives (hereinafter referred to as the "New Technology Representative" and the "Patent Representative"; see 1827.373(e)) to administer the clause, protect the Government's rights, and take other actions in relation thereto. The New Technology Representative shall be the Technology Utilization Officer or the staff member (by titled position) having cognizance of technology utilization matters for the installation concerned. The Patent Representative shall be the Patent Counsel (by titled position) having cognizance of patent matters for the installation concerned. Designation of these representatives in the contract is made in the clause at 1852.227-72, Designation of New Technology Representative and Patent Representative.

(2) The contracting officer shall—(i) Furnish the New Technology Representative a copy of each contract (and modifications thereto) containing the clause, and copies of the final technical report, interim technical progress reports, and other pertinent material provided under the contract, unless the New Technology Representative indicates otherwise;

(ii) Notify the New Technology Representative as to which installation organizational element has technical cognizance of the contract; and

(iii) Furnish the Patent Representative a copy of each contract (and modifications thereto) containing the clause, and copies of the final technical report, interim progress reports, and other pertinent material provided under the contract, unless the Patent Representative indicates otherwise.

(3) The New Technology Representative and the Patent Representative shall:

(i) Maintain complete files of correspondence and other actions involving their respective administration of the clause; and

(ii) Furnish copies of documents appropriate for inclusion in the general contract files to the contracting officer.

(4) If a subject invention is made under funding agreements of more than one agency, the agencies shall designate one agency as responsible for administering the rights of the Government in the invention.

[54 FR 28272, July 5, 1989, as amended at 60 FR 40515, Aug. 9, 1995]

1827.375-2 Follow-up by contractor.

(a) *Contractor procedures.* (1) Each contractor other than a small business firm or a nonprofit organization shall establish and maintain active and effective procedures to ensure that reportable items are promptly identified, reported, and disclosed in order to meet the requirements of the clause. These procedures must include the maintenance of:

(i) Laboratory notebooks or equivalent records and any other records reasonably necessary to document the conception and/or first actual reduction to practice of reportable items; and

(ii) Records showing that the procedures for identifying and disclosing reportable items are followed.

Upon request, the contractor shall furnish the contracting officer or a designated representative, for evaluation and a determination as to their effectiveness, a description of the procedures.

(2) In order to ensure adequate understanding of and commitment to the reporting requirements of the New Technology clause, prospective contractors under any contract with an estimated cost of \$2,500,000 or more (or a lesser dollar amount where considered appropriate) that contains the clause may be required to submit for approval a detailed plan for new technology reporting (see 1835.003-71).

(b) *Contractor reports.* (1) During the period of performance of each contract or subcontract, the contractor or subcontractor is required to submit to the New Technology Representative (or

any other representative designated by the contracting officer) all disclosures of reportable items and subject inventions, interim reports, subcontract identification, and other information in the manner required by the clause, and upon the completion of the work under the contract or subcontract, the final report if required by the clause.

(2) Reporting of reportable items as required by the New Technology clause promptly and before the completion of contract work, and prompt submission of the final report upon completion of contract work, will aid new technology clearance. Timely submission of annual interim reports, where contracts cover a period of more than one year, will also facilitate clause administration and expedite final clearance.

[54 FR 28272, July 5, 1995, as amended at 60 FR 40515, Aug. 9, 1995]

1827.375-3 Follow-up by Government.

(a) The New Technology Representative shall review the technical progress of work performed under the contract to ascertain whether the contractor and its subcontractors are complying with the clause's reporting requirements. This effort should be directed primarily toward contracts and subcontracts that, by the nature of the work to be performed or the dollar amounts involved, are likely to produce reportable items or subject inventions of significant quantity or quality, or toward contracts and subcontracts under which there is reason to believe that the contractors may not be complying with contractual obligations. Other contracts and subcontracts should be spot-checked when feasible. These follow-up activities may include—

(1) Reviewing the contractor's technical reports;

(2) Requesting the Patent Representative to check sources for patents issued to the contractor in fields related to the contractor's Government contracts;

(3) Interviewing contractor personnel regarding work under the contract, observing the work on-site, and inspecting laboratory notebooks and other contractor records related to work under the contract, to the extent authorized by the clause;

(4) Interviewing agency technical personnel concerning novel developments in contracts under their cognizance; and

(5) Ensuring that the contractor is timely in reporting reportable items, disclosing subject inventions, and submitting interim reports, subcontract identification, and final reports as required by the clause.

(b) The New Technology Representative shall forward to the Patent Representative copies of all contractors' and subcontractors' written reports of reportable items and disclosures of subject inventions, and a copy of the written statement, if any, submitted with the report of the reportable item. The New Technology Representative shall consult with the Patent Representative whenever a question arises as to whether a given reportable item is to be considered a subject invention and whether it was made in the performance of work under the contract. All correspondence relating to:

(1) Inventions and waivers under the New Technology clause and

(2) Election of title under the Patent Rights—Retention by the Contractor (Short Form) clause

shall also be promptly forwarded to the Patent Representative.

(c) The Patent Representative shall review each reportable item to ascertain whether it is to be considered a subject invention, obtain any determinations required by paragraph (b) of the New Technology clause, and notify the contractor. As to any subject invention, the Patent Representative shall:

(1) Ensure that the contractor has provided sufficient information to protect the Government's rights and interests in it and to permit the preparation, filing, and prosecution of patent applications,

(2) Make determinations of inventorship, and

(3) Ensure the preparation of instruments establishing the Government's rights.

The Patent Representative shall also, as necessary, conduct selected reviews of the nature set forth in paragraph (a) of this section to ensure that subject inventions are identified, adequately

documented, and timely reported or disclosed.

(d) Upon receipt of any final report required by the clause, and upon determination that the contract work is complete, the New Technology Representative shall determine whether the contractor has complied with the clause's reporting requirements. If so, the New Technology Representative shall certify compliance, obtain the Patent Representative's concurrence, and forward the certification to the contracting officer. Such determinations generally will require consultation with cognizant technical personnel.

(e) Either the New Technology Representative or the Patent Representative, in consultation with the other, may prepare opinions, make determinations, and otherwise advise the contracting officer with respect to any withholding of payment under paragraph (g) of the New Technology clause. Either the New Technology Representative or the Patent Representative may represent the contracting officer for the purpose of examining the contractor's books, records, and other documents in accordance with paragraph (f) of the New Technology clause and take corrective action as appropriate. However, no action may be taken by either the New Technology Representative or the Patent Representative that would:

(1) Constitute a final decision under the Disputes clause,

(2) Involve any change or increase in the work required to be performed under the contract that is inconsistent with any right of appeal provided in FAR 27.304-5 or 14 CFR 1245.1, or

(3) Otherwise be outside the scope of the contract.

(f) If it is determined that a contractor or subcontractor does not clearly understand the rights and obligations of the parties under a patent rights clause, or that its procedures for complying with the clause are deficient, a post-award orientation should be conducted to explain these rights and obligations (see FAR subpart 42.5). When a contractor fails to establish, maintain, or follow effective procedures for identifying, disclosing, and, when appropriate, filing patent applications on in-

ventions (if such procedures are required by the patent rights clause), or after appropriate notice fails to correct any deficiency, the contracting officer or a representative may require the contractor to make available for examination books, records, and documents relating to the contractor's inventions in the same field of technology as the contract effort to enable a determination of whether there are such inventions and may invoke the withholding of payments provision (if any) of the clause. The withholding of payments provision (if any) of the patent rights clause or of any other contract clause may also be invoked if the contractor fails to disclose a subject invention. Significant or repeated failures by a contractor to comply with the patent rights obligation in its contracts shall be documented and made a part of the general file (see FAR 4.801(c)(3)).

(g) The contracting officer shall not approve release of final payment under the contract and, if applicable, any reserve set aside under the withholding provisions of the clause for deficiencies and delinquent reporting not corrected as of the time of the submission of the final report by the contractor until receipt of the New Technology Representative's certification of compliance, and the Patent Representative's concurrence, as specified in paragraph (d) of this section.

[54 FR 28272, July 5, 1989, as amended at 60 FR 40515, Aug. 9, 1995]

1827.375-4 Conveyance of invention rights acquired by the Government.

(a) When the Government acquires the entire right to, title to, and interest in an invention under the clause at 1852.227-70, New Technology, a determination of title is to be made in accordance with section 305(a) of the National Aeronautics and Space Act of 1958, as amended (42 U.S.C. 2457(a)), and reflected in appropriate instruments executed by NASA and forwarded to the contractor.

(b) When the Government acquires the entire right to, title to, and interest in an invention other than pursuant to paragraph (a) of this section, FAR 27.305-4 shall apply.

1827.375-5 Publication and release of invention disclosures.

FAR 27.305-5 shall apply.

1827.376-6 Licensing of background rights to third parties.

FAR 27.306 shall apply.

Subpart 1827.4—Rights in Data and Copyrights

1827.404 Basic rights in data clause.

(a) *Alternate definition of limited-rights data.* When the clause at FAR 52.227-14, Rights in Data—General, is used with Alternate I, but without Alternate II or Alternate III, all data qualifying as limited-rights data as defined in Alternate I may be withheld from delivery, and any study or report delivered under the contract will contain only unlimited rights data that may be disseminated by NASA. If delivery of withholdable data is required, Alternate II or Alternate III, as applicable, may be used, but any data subject to these alternates will be delivered under the applicable limited-rights or restricted-rights notices and therefore may not be disclosed outside NASA except to the extent permitted by these notices (see FAR 27.404 (d) and (e)).

(b) *Protection of limited-rights data specified for delivery.* The contracting officer shall consult with the installation's Patent or Intellectual Property Counsel regarding any questions concerning the delivery of limited-rights data and/or the use of Alternate II that may arise:

(1) From an offeror's response to the provision at FAR 52.227-15, Representation of Limited-Rights Data and Restricted Computer Software, or

(2) During negotiations.

(c) *Protection of restricted computer software specified for delivery.* The contracting officer shall consult with the installation's Patent or Intellectual Property Counsel regarding any questions concerning the delivery of restricted computer software and/or the use of Alternate III that may arise:

(1) From an offeror's response to the provision at FAR 52.227-15, Representation of Limited-Rights Data and Restricted Computer Software, or

(2) During negotiations.

(d) *Copyrighted data.* (1) The Contracting Officer shall consult with the installation's Patent or Intellectual Property Counsel before granting in accordance with FAR 27.404(f)(1)(ii) permission for a contractor to claim copyright subsisting in data, other than computer software, first produced under the contract. For copyright of computer software first produced under the contract, see paragraph (e) of this section.

(2) Obtaining a copyright license of a different scope than set forth in paragraph (c)(1) or (2) of the clause at 52.227-14, Rights in Data—General, for any contract or class of contracts in accordance with either FAR 27.404(f)(1)(iv) or FAR 27.404(f)(2)(i), is permitted only with approval of the Procurement Officer and concurrence of the installation's Patent or Intellectual Property Counsel.

(e) *Release, publication, and use of data.* (1) Paragraph (3) (see 1827.409(e) and 1852.227-14) is to be added to paragraph (d) of the clause at FAR 52.227-14, Rights in Data—General, whenever that clause is used in any contract other than one for basic or applied research with a university or college. Paragraph (d)(3)(i) of the clause provides that the contractor may not assert claim to copyright, publish, or release to others computer software first produced in the performance of a contract without the contracting officer's prior written permission. This is in accordance with NASA policy and procedures for the distribution of computer software developed by NASA and its contractors.

(2) The contracting officer may, in consultation with the installation's Patent or Intellectual Property Counsel, grant the contractor permission to copyright, publish, or release to others computer software first produced in the performance of a contract if—

(i) The contractor has identified an existing commercial computer software product line or proposes a new one and states a positive intention of incorporating any computer software first produced under the contract into that line, either directly itself or through a licensee;

(ii) The contractor has made, or will be required to make, significant contributions to the development of the computer software by co-funding or by cost-sharing, or by contributing resources (including but not limited to agreement to provide continuing maintenance and update of the software at no cost for Governmental use); or

(iii) The concurrence of a cognizant official named in NASA Management Instruction 2210.2 or the Director, Technology Utilization Division, NASA Headquarters, has been obtained.

(3) The contractor's request for permission in accordance with paragraph (e)(1) of this section may be made either before contract award or during contract performance. Any permission granted in accordance with paragraph (e)(2)(i) or (ii) of this section, shall be by express contract provision (or amendment) overriding paragraph (d)(3) of this section, rather than by deleting paragraph (d)(3) from the clause. Any permission granted in accordance with paragraph (d)(2)(iii) of this section may be either by deleting paragraph (d)(3) or by special contract provision, as appropriate. Any contract provision relating to any permission granted in accordance with paragraph (2)(i) or (2)(ii) of this section may contain appropriate assurances that the computer software will be incorporated into an existing or proposed new commercial computer software product line within a reasonable time and/or that the agreed contributions to the Government are fulfilled, with contingencies enabling the Government to obtain the right to distribute the software for commercial use, including the right to obtain assignment of copyright where applicable, in order to prevent the computer software from being suppressed or abandoned by the contractor. Also, when any permission to copyright is granted, any copyright license retained by the Government shall be of the same scope as set forth in paragraph (c)(1) of the clause (see also FAR 27.404(f)(1)) and without any obligation of confidentiality on the part of the Government, unless in accordance with paragraph (e)(2)(ii) of this section the contributions of the Contractor may be considered "substantial" for the purposes of FAR 27.408

(i.e., approximately 50 percent), in which case rights consistent with FAR 27.408 may be negotiated for the computer software in question.

(4) If the contractor has not been granted permission to copyright in accordance with paragraphs (e)(1) and (e)(2) of this section, paragraph (d)(3)(ii) of the clause at FAR 52.227-14, Rights in Data—General (as modified by 1852.227-14), enables NASA to direct the contractor to assert claim to copyright in computer software first produced under the contract and to assign, or obtain the assignment of, such copyright to the Government or its designee. The Contracting Officer may, in consultation with the installation patent or intellectual property counsel, so direct the contractor in situations where copyright protection is considered necessary in furtherance of agency mission objectives, needed to support specific agency programs, or necessary to meet statutory requirements.

(5) In order to insure consistency with copyright law, paragraph (d)(3)(iii) clarifies that the word "establish" in FAR 52.227-14, Rights in Data—General shall be construed as "assert" when used with reference to a claim to copyright.

(f) *Unauthorized marking of data.* The contracting officer shall consult with the installation's Patent or Intellectual Property Counsel before taking any action regarding unauthorized markings of data under paragraph (e) of the clause at FAR 52.227-14, Rights in Data—General.

(g) *Omitted or incorrect notices.* The contracting officer shall consult with the installation's Patent or Intellectual Property Counsel before agreeing to add or correct any markings on data under paragraph (f) of the clause at FAR 52.227-14, Rights in Data—General.

[54 FR 28272, July 5, 1989, as amended at 56 FR 12458, Mar. 26, 1991; 60 FR 40515, Aug. 9, 1995; 60 FR 47312, Sept. 12, 1995]

1827.405 Other data rights provisions.

(a) *Acquisition of existing computer software.* (1) When the clause at FAR 52.227-19, Commercial Computer Software—Restricted Rights, is used, NASA paragraph (e) (see 1827.409(f))

may be added to receive updates, correction notices, consultation information, and other similar information on any computer software delivered under the purchase order or contract by authorizing the contracting officer or the contract technical representative/user to sign any vendor-supplied agreements, registration forms, or cards and return them directly to the vendor. This procedure is to facilitate receiving applicable information and is not intended to alter any NASA rights or obligations set forth in the clause or elsewhere in the contract. The price, schedule, and other terms, if any, are to be specified in the purchase order or contract.

(2) When the clause at 52.227-19, Commercial Computer Software—Restricted Rights, is used, NASA paragraph (f) (see 1827.409(g)) may be added to incorporate applicable portions of the contractor's standard commercial license or lease agreement into the purchase order/contract to the extent consistent with the clause, Federal laws, standard industry practices, and the FAR.

(3) Instead of the clause at FAR 52.227-19, Commercial Computer Software—Restricted Rights (either with or without additional paragraphs (e) and/or (f)), the contracting officer may use the clause at 1852.227-86, Commercial Computer Software—Licensing. This clause is particularly useful when there are multiple computers on which the computer software may be used, but simultaneous use is prohibited or restricted in the vendor/contractor standard commercial software license to be incorporated in and made part of the purchase order/contract. It also automatically adopts terms in the vendor/contractor standard commercial license that may be less restrictive than those set forth in the clause at FAR 52.227-19 without having to customize that clause or modify the purchase order/contract. In addition, it enables the vendor/contractor's standard marking to be used without requiring additional markings on the software.

(b) *Contracts awarded under the Small Business Innovative Research (SBIR) Program.* If, during the performance of an SBIR contract (Phase I or Phase II), the need arises for NASA to obtain de-

livery of restricted computer software as defined in the clause at FAR 52.227-20, Rights in Data—SBIR Program, and the contractor agrees to such delivery, the restricted computer software may be acquired with restricted rights by modification of the contract or under an agreement incorporated in and made part of the contract, using the restricted rights set forth in FAR 27.404(e) and the related restrictions as a guide.

(c) *Production of special works.* Paragraph (f) of the clause at 48 CFR 1852.227-17 is to be added to the clause at FAR 52.227-17, Rights in Data—Special Works, whenever that clause is used in any NASA contract.

[54 FR 28272, July 5, 1989, as amended at 60 FR 40515, Aug. 9, 1995; 60 FR 47312, Sept. 12, 1995; 61 FR 5314, Feb. 12, 1996]

1827.406 Acquisition of data.

(a) *General.* When specifying data delivery requirements in accordance with FAR 27.406(a), requirements for delivering technical data relating to standard commercial items, components, or processes should be kept to the absolute minimum consistent with the purpose for which they are being procured. Normally, a vendor's manuals for installation, operation, or maintenance and repair and/or form, fit, and function data are adequate.

(b) *Reports of work.* (1) In addition to any other data delivery requirements set forth in the contract in accordance with FAR 27.406, contractors normally should be required to furnish reports of work performed under research and development contracts (fixed-price and cost reimbursement) and also may be required to furnish them in cost-reimbursement supply contracts if they are considered desirable for monitoring contract performance. This purpose shall be achieved by including the following general requirements, modified as needed to meet the particular requirements of the contract, in the section of the contract specifying data delivery requirements:

(i) *Monthly progress reports.* The contractor shall submit separate monthly progress reports of all work accomplished during each month of contract performance. Reports shall be in narrative form, brief, and informal. They

shall include a quantitative description of progress, an indication of any current problems that may impede performance, proposed corrective action, and a discussion of the work to be performed during the next monthly reporting period. (Normally, this requirement should not be used in contracts with nonprofit organizations.)

(ii) *Quarterly progress reports.* The contractor shall submit separate quarterly reports of all work accomplished during each three-month period of contract performance. In addition to factual data, these reports shall include a separate analysis section interpreting the results obtained, recommending further action, and relating occurrences to the ultimate objectives of the contract. Sufficient diagrams, sketches, curves, photographs, and drawings shall be included to convey the intended meaning.

(iii) *Final report.* The contractor shall submit a final report that documents and summarizes the results of the entire contract, including recommendations and conclusions based on the experience and results obtained. The final report shall include tables, graphs, diagrams, curves, sketches, photographs, and drawings in sufficient detail to explain comprehensively the results achieved under the contract.

(iv) *Report Documentation Page.* The contractor shall include a completed Report Documentation Page (SF 298) as the final page of each report submitted in accordance with subdivisions (b)(1) (i) through (iii) of this section.

(v) *Submission.* The required numbers of copies of the reports specified in subdivisions (i) through (iii) shall, as defined in the clause at 1852.235-70, be submitted to the contracting officer technical representative (COTR) in the absence of other instructions from the requesting activity. In addition, a reproducible copy and a printed, or reproduced, copy of the reports shall be sent to the NASA Center for AeroSpace Information (CASI), Attn: Accessioning Department, 800 Elkridge Landing Road, Linthicum Heights, MD 21090-2934.

(2) The contracting officer shall consider the desirability of providing reports on the completion of significant units or phases of work, in addition to

periodic reports and reports on the completion of the contract. The data delivery requirements section of the contract shall also list other data to be delivered and provide, as necessary, specific instructions regarding delivery, submission dates, report numbering, numbers of copies to be submitted, distribution lists, and any other information to ensure distribution of the reports.

[54 FR 28272, July 5, 1989, as amended at 56 FR 12458, Mar. 26, 1991; 56 FR 48747, Sept. 26, 1991; 57 FR 58720, Dec. 11, 1992; 60 FR 40515, Aug. 9, 1995]

1827.407 Rights to technical data in successful proposals.

NASA may obtain rights in technical data (but not commercial and financial information) contained in a solicited or unsolicited proposal upon which a contract award is based, only by specific agreement with the prospective contractor in accordance with the procedures of FAR 27.407 and the clause at FAR 52.227-23, Rights to Proposal Data (Technical).

[54 FR 39373, Sept. 26, 1989]

1827.408 Cosponsored research and development activities.

The contracting officer shall consult with the installation's Patent or Intellectual Property Counsel before limiting the acquisition of or acquiring less than unlimited rights to any data developed under contracts involving cosponsored research and development activities in accordance with FAR 27.408.

1827.409 Solicitation provisions and contract clauses.

(a) Alternate I is to be used with the FAR clause at 52.227-14, Rights in Data—General, only with approval of the Procurement Officer and concurrence of the installation's Patent or Intellectual Property Counsel. An example of its use is where the principal purpose of the contract (such as a contract for basic or applied research) does not involve the development, use, or delivery of items, components, or processes that are intended to be acquired for use by or for the Government (either under the contract in question or

under any anticipated follow-on contracts relating to the same subject matter).

(b) The specific purposes for the release of limited-rights data outside the Government set forth in subdivisions (d)(1) (i) through (v) of FAR 27.404 are to be added to the Limited-Rights Notice of subparagraph (g)(2) of Alternate II of the clause at FAR 52.227-14, Rights in Data—General. However, the contracting officer may, upon consultation with the installation's Patent or Intellectual Property Counsel, make deletions from the specific purposes listed. If all are deleted, the word "None" must be inserted. Additions to those specific purposes listed may be made only with the approval of the Procurement Officer and concurrence of the installation's Patent or Intellectual Property Counsel.

(c) The contracting officer shall consult with the installation's Patent or Intellectual Property Counsel regarding the acquisition of restricted computer software with greater or lesser rights than those set forth in Alternate III of the clause at FAR at 52.227-14, Rights in Data—General, in accordance with FAR 27.404(e)(2). Where it is impractical to actually modify the notice of Alternate III, this may be done by express reference in a separate clause in the contract or by a collateral agreement that addresses the change in the restricted rights.

(d) Use of Alternate IV with the clause at FAR 52.227-14, Rights in Data—General, in any contract other than a contract for basic or applied research to be performed solely by a college or university on campus (but not for the management or operation of Government facilities) is permitted only with approval of the Procurement Officer and concurrence of the installation's Patent or Intellectual Property Counsel.

(e) In accordance with 1827.404(e)(1), the contracting officer shall add subparagraph (3) set forth in 1852.227-14 to paragraph (d) of the clause at FAR 52.227-14, Rights in Data—General, except in solicitations and contracts for basic or applied research with universities or colleges.

(f) In accordance with 1827.405(a)(1), the contracting officer shall add para-

graph (e) set forth in 1852.227-19(a) to the clause at FAR 52.227-19, Commercial Computer Software—Restricted Rights, when it is contemplated that updates, correction notices, consultation information, and other similar items of information relating to commercial computer software delivered under a purchase order or contract are available and their receipt can be facilitated by signing a vendor supplied agreement, registration forms, or cards and returning them directly to the vendor.

(g) In accordance with 1827.405(a)(2), the contracting officer shall add paragraph (f) set forth at 1852.227-19(b) to the clause at FAR 52.227-19, Commercial Computer Software—Restricted Rights, when portions of a contractor's standard commercial license or lease agreement consistent with the clause, Federal laws, standard industry practices, and the FAR are to be incorporated into the purchase order or contract.

(h) In accordance with 1827.405(a)(3), the contracting officer shall use the clause at 1852.227-86, Commercial Computer Software—Licensing, in lieu of FAR 52.227-19, Commercial Computer Software—Restricted Rights, when it is considered appropriate for the acquisition of existing computer software in accordance with FAR 27.405(b)(2).

(i) In accordance with 1827.406(b)(1)(v), the contracting officer shall insert the clause 1852.235-70, Center for AeroSpace Information (November 1992), in all research and development contracts and in cost-reimbursement supply contracts involving research and development work which require the delivery of reports or data to CASI.

[54 FR 28272, July 5, 1989, as amended at 55 FR 27089, June 29, 1990; 57 FR 58720, Dec. 11, 1992; 60 FR 40515, Aug. 9, 1995]

EDITORIAL NOTE: At 60 FR 40515, Aug. 9, 1995, the National Aeronautics and Space Administration attempted to amend paragraph (i) of section 1827.409 by removing the word "at"; however, "at" does not exist at this location.

National Aeronautics and Space Administration

1828.101-70

Subpart 1827.6—Foreign License and Technical Assistance Agreements

SOURCE: 54 FR 39373, Sept. 26, 1989, unless otherwise noted.

1827.670 Space Station Freedom technical data.

1827.670-1 Policy.

NASA and its contractors shall comply with the International Traffic in Arms Regulations (ITAR), 22 CFR parts 120 through 130 (Subchapter M) with respect to the transfer of technical data to any International Space Station Freedom Program multilateral partner. When authorized by the Directive entitled, "Space Station Level I Directive—Subject: Space Station Technology Transfer Control—dated March 21, 1989", certain technical data in support of NASA's International Space Station Freedom Program may be exported to a foreign recipient specified in writing by the contracting officer. Contracting officers, or designees, will assure that any transfer of data to a foreign recipient will be in compliance with the Directive.

54 FR 39373, Sept. 26, 1989, as amended at 60 FR 40515, Aug. 9, 1995]

1827.670-2 Contract clause.

The contracting officer shall insert the clause at NFS 1852.227-87, Transfer of Technical Data Under Space Station International Agreements, in all solicitations, contracts, and purchase orders in support of Space Station Freedom Program activities that may involve transfer of technical data subject to the International Traffic in Arms Regulations, 22 CFR parts 120 through 130 (Subchapter M) in accordance with the "Space Station Level I Directive—Subject: Space Station Technology Transfer Control—dated March 21, 1989."

[54 FR 39373, Sept. 26, 1989, as amended at 57 FR 40855, Sept. 8, 1992]

PART 1828—BONDS AND INSURANCE

Subpart 1828.1—Bonds

Sec.

1828.101 Bid guarantees.

1828.101-70 NASA solicitation provision.
1828.102 Performance and payment bonds for construction contracts.
1828.102-1 General.
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1828.371 Clauses for cross-waivers of liability for Space Shuttle services, Expendable Launch Vehicle (ELV) launches, and Space Station activities.
1828.372 Clause for minimum insurance coverage.

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 54 FR 28281, July 5, 1989, unless otherwise noted.

Subpart 1828.1—Bonds

1828.101 Bid guarantees.

1828.101-70 NASA solicitation provision.

In accordance with FAR 28.101, the contracting officer shall insert the provision at 1852.228-73, Bid Bond, in construction solicitations where offers are expected to exceed \$25,000, and a performance bond or a performance and payment bond is required. The contracting officer may increase the amount of the bid bond to protect the Government from loss, as long as the amount does not exceed \$3 million. This provision may be used in other than construction procurements if the requirements of FAR 28.103 have been complied with.